

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HAROLD LEROY FISHER, JR.,

Petitioner,

v.

CAROL HOLINKA, Warden,

Respondent.

MEMORANDUM

07-cv-639-bbc

This case is presently on appeal. On August 6, 2008, plaintiff was sent a copy of a letter from this court to the Court of Appeals for the Seventh Circuit certifying and transmitting the record on appeal in this case. Included with plaintiff's copy of the August 6 letter was a copy of the current docket sheet. Now, plaintiff has written to this court saying that he has reviewed the docket sheet and believes that he did not receive a copy of an order dated April 21, 2008, dkt. #21. He says that "the lack of service . . . prevented [his] ability to timely appeal Judge Crabb's decision in this matter." I am enclosing to plaintiff with his copy of this memorandum a copy of the April 21 order. I note that the bottom right-hand corner of the order contains a stamp showing that "M. Hardin, Secretary" mailed a copy of the order to "petitioner & AUSA Herje" on April 21, 2008.

With regard to plaintiff's concerns of timeliness, his notice of appeal was timely filed in this court on June 11, 2008, following entry of judgment on June 3, 2008. He was well within the 30-day time limit required by Fed. R. App. P. 4(a)(1)(A).

One final matter requires comment. It has come to the court's attention that the motion for appointment of counsel plaintiff filed on June 11, 2008, dkt. #28, remains pending in this case. Because the filing of plaintiff's notice of appeal on the same day as this motion divests this court of jurisdiction to consider his request, I will take no action on this motion. There is no need to forward plaintiff's June 11 motion to the court of appeals because he has filed motions for the same relief in his case on appeal on July 21, 2008 and August 21, 2008, dkt. ##4, 7.

Entered this 27th day of August, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge